

**MINUTES OF THE  
LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE**

Wednesday, November 20, 2013 – 2:00 p.m. – Room 25 House Building

**Members Present:**

Sen. Todd Weiler, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. Margaret Dayton  
Sen. Luz Robles  
Sen. Daniel W. Thatcher  
Rep. Derek E. Brown  
Rep. Richard A. Greenwood  
Rep. Dana Layton  
Rep. Paul Ray  
Rep. Edward H. Redd  
Rep. Marc K. Roberts  
Rep. Jennifer M. Seelig

Rep. Keven J. Stratton  
Rep. Mark A. Wheatley

**Members Absent:**

President Wayne L. Niederhauser  
Rep. Keith Grover

**Staff Present:**

Mr. Nathan W. Brady, Policy Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Lori Rammell, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Oda called the meeting to order at 2:32 p.m. Rep. Grover was excused from the meeting.

**MOTION:** Rep. Oda moved to approve the minutes of the October 16, 2013, meeting. The motion passed unanimously. Rep. Greenwood, Rep. Ray, Rep. Stratton, and Rep. Wheatley were absent for the vote.

**2. Parole Violator Center**

Ms. Geri Miller-Fox, Division Director, Adult Probation and Parole, Department of Corrections, discussed the status of the 306-bed Parole Violator Center. She said the center is for persons who have committed significant parole violations and would otherwise be returning to prison. She added that 52% of those who entered the Parole Violator Center have successfully completed the program. She stated that there are currently 81 offenders in the program, and the department is preparing for phase two of the operational increase. She stated that the average length of stay was originally 90 days, but 120 days on average is now recommended. She described how prisoners who leave the program, then use illegal substances, traditionally would not return to the facility, but would eventually be rearrested. Now, she said, those prisoners will return, acknowledge their illegal use, enter a stronger treatment program, and be allowed to remain in the treatment center.

Ms. Wendy Horlacher, Regional Administrator, Adult Probation and Parole, Region 3, Parole Violator Center, described the preparations prisoners make before being released to the treatment center and the obligations of residence there.

**3. Use of Medicaid for State Inmates**

Mr. Mike Haddon, Deputy Director, Utah Department of Corrections, provided an update on the department's use of Medicaid to cover health expenses of eligible state inmates. He stated that to be eligible an inmate must have a 24-hour or longer hospital stay and must be otherwise Medicaid eligible. He said that since April of this year when the Department of Corrections began working with the Department of Health and the Department of Medicaid Services, 88 individuals have been found Medicaid eligible. He

stated that the department has received about \$1.1 million back in Medicaid funds from the state's use of \$223,000 in matching funds, covered by the department's clinical services appropriation line item. Mr. Haddon responded to questions from the committee regarding community correctional centers and Medicaid eligibility.

Dr. Richard Garden, Clinical Services Bureau, Department of Corrections, said that medication is provided in transition for a limited time, and those medications must be paid for by the offender out of pocket. He added that there are some clinics and other nonprofit facilities serving that population's prescription needs. He said the department also has a mentally ill offender program, though due to lack of resources it is used very selectively.

#### **4. Emergency Vehicle Operator Duty of Care Provisions**

Rep. Brad L. Dee introduced draft legislation "Emergency Vehicle Operator Duty of Care Revisions" (2014FL-0267/008), which amends provisions relating to the duty of care for an emergency vehicle operator. He stated that this legislation was prompted by a decision by the Utah Supreme Court that he believes puts police officers at increased risk when pursuing or stopping a vehicle. He related a case in Cache Valley where a suicidal person stole a vehicle and, during the police pursuit, went off the road and was killed. The officer, he added, is subsequently facing a lawsuit brought by the deceased person's family.

Mr. Steve Walkenhorst, Assistant Attorney General, Utah Attorney General's Office, added that the court wrote that the Legislature had failed to carve out an exception for fleeing suspects, therefore cases involving fleeing suspects must be included. He stated that the case provides direction for what action the Legislature may take regarding law enforcement officers and fleeing suspects.

Rep. Dee responded to questions from the committee regarding the amount of leeway being given to officers in this bill, and whether this bill absolves officers from liability in other cases. He stated that the bill stipulates that an officer may be found liable for causing harm that is not related to the original offense. He also said there is no absolution for misconduct on the part of the officer.

Chair Oda relinquished the chair to Sen. Weiler.

Mr. Phil Dyer, attorney, Utah Association for Justice, said the association hopes to see a balance regarding the language in the bill that concerns commission of a crime, and that this bill is essentially blanket absolution for police officers. He said the association equates "no duty of care" with "no liability," and the association believes police officers should be held responsible for their actions and reactions.

Mr. Steve Sullivan, attorney, expressed concerns with some of the language in the bill, and said valid questions regarding the draft legislation include taking the reasonable care standard out of the existing statute. But, he said, with some discussion he believes it could be a viable bill.

**MOTION:** Rep. Ray moved that "Emergency Vehicle Operator Duty of Care Revisions" be passed out as a committee bill. The motion passed unanimously. Rep. Stratton was absent for the vote.

#### **5. Controlled Substance Amendments - Alepsia extract**

Rep. Gage Froerer explained that Alepsia is a specific extract from hemp plants and that it is being used in treating epileptic seizures.

Ms. Annette Maughan, President, Epilepsy Association of Utah, spoke representing 35 parents of children with seizures. She distributed a letter from Dr. Francis M. Filloux, who is the Chief of the Division of Pediatric Neurology at the University of Utah, and a copy of her statement, and discussed the current medications used to treat seizures and the side effects of those drugs. She said that this extract is being studied at Brigham Young University, the University of Utah, and soon will be studied at Weber State University. She stated that this extract meets the standards set by Canadian food and drug authorities but, because this extract is produced in Colorado, Utah is questioning its importation and legality.

Rep. Froerer explained that the quality of the substance coming from Colorado can be ensured by Utah state lab testing or other research facility testing.

Ms. Jennifer May, Hope for Children with Epilepsy, stated that more than 40 children are using the Alepsia extract and are experiencing reduced seizures. She said that not only are these patients finding relief, but they are doing so without the side effects common with other seizure medications.

Dr. Scott Steffensen, neural scientist, Brigham Young University, stated that he thinks this extract is promising. He foresees studying it on animal models, then eventually moving on to additional trials.

Dr. Mark Rosenfeld, Chief Executive Officer, ISA Scientific, reported that this extract is a hemp product and should not be referred to as marijuana. He said there appears to be neither a potential for abuse nor any side effects.

## **6. Overdose Reporting Amendments**

Rep. Carol Spackman Moss introduced draft legislation "Overdose Reporting Amendments" (2014FL-0068/007) and explained that it addresses a scope of immunity for persons who report and seek emergency aid for a person who has overdosed. She stated that Utah ranks fourth in the country in the number of deaths due to accidental drug overdose. She said that those present are hesitant to seek medical assistance to save the life of a person who has overdosed because they are afraid that they will be charged with an offense. She outlined the guidelines under which a person can claim an affirmative defense.

Mr. Paul Boyden, Executive Director, Statewide Association of Prosecutors, responded to questions from the committee.

**MOTION:** Sen. Thatcher moved that "Overdose Reporting Amendments" be passed out as a committee bill. The motion passed unanimously. Sen. Dayton, Sen. Robles, and Rep. Brown were absent for the vote.

## **7. DNA Collection Amendments**

Rep. Steve Eliason introduced draft legislation "DNA Collection Amendments" (2014FL-0237/007), which modifies the Public Safety Code regarding the collection of DNA from offenders at the time of arrest. He pointed out that fingerprints and photos are currently taken at the time of arrest on felony charges and Class A misdemeanors. He stated that this bill does not require retention of DNA if someone is ultimately not convicted of the crime for which their DNA was collected and they request that the record be destroyed.

Mr. Jay Henry, Crime Laboratory Director, Utah Department of Public Safety, reported that DNA collection is a benefit to law enforcement and DNA collection is resulting in much higher rates of crimes solved, including cold case resolutions. He stated that a person required to submit a DNA sample is

required to pay a collection fee of \$150, which pays for the processing of the sample for a DNA profile. He said about 3,000 samples are not currently processed or are processing in the queue.

Ms. Marina Lowe, Legislative General Counsel, American Civil Liberties Union, expressed concerns with this legislation. She said taking DNA is very different from taking a photograph because it includes genetic and health information.

Mr. Connor Boyack, Libertas Institute, read from US Supreme Court Justice Anton Scalia's dissent in *King v. Maryland*. He suggested that Class A misdemeanors be removed from the proposed legislation, and only serious offenses be considered.

Mr. Reed Richards, attorney, Weber County Sheriff's Office, said the issue of taking DNA samples has been clearly authorized by the US Supreme Court. He said the best way to determine whether law enforcement has the right perpetrator is to compare DNA samples, and that additional data taken at booking is essential. He added that a Class A misdemeanor is in fact a serious crime and warrants DNA collection. He said it is a logical addition to the booking process to collect a DNA sample.

Rep. Eliason spoke in favor of collection of DNA for Class A misdemeanors, as those include very serious crimes.

**MOTION:** Rep. Greenwood moved that the committee pass out as a committee bill "DNA Collection Amendments."

**SUBSTITUTE MOTION:** Sen. Thatcher moved that the committee move to the next agenda item, allowing "DNA Collection Amendments" to go through the legislative process during the General Session. The motion passed with Chair Weiler, Sen. Dayton, Rep. Greenwood, and Rep. Oda voting in opposition. Sen. Robles and Rep. Brown were absent for the vote.

## **8. Retail Theft Amendments**

Sen. Thatcher introduced draft legislation "Theft Amendments" (2014FL-0069/004), which modifies the Utah Criminal Code relating to the punishment for theft of property or services.

**MOTION:** Sen. Thatcher moved that "Retail Theft Amendments" be passed out as a committee bill. The motion passed unanimously. Sen. Robles and Rep. Brown were absent for the vote.

## **9. Controlled Substances Amendments**

Rep. Ray introduced draft legislation "Controlled Substances Amendments" (2014FL-0497/003), which modifies the Utah Controlled Substances Act by adding substances that constitute the controlled substance often referred to as "spice." He responded to questions from the committee regarding the need to update the controlled substances list.

Mr. Boyden explained that to keep up with modifications, the controlled substances list must be amended each year.

**MOTION:** Rep. Ray moved that "Controlled Substances Amendments" be passed out as a committee bill. The motion passed with Rep. Roberts voting in opposition. Sen. Robles and Rep. Brown were absent for the vote.

#### **10. Drug Offender Reform Act (DORA)**

Ms. Mary Lou Emerson, Director, Utah Substance Abuse Advisory Council, Commission on Criminal and Juvenile Justice, presented "Drug Offender Reform Act (DORA) 2013 Statewide Final Report Findings" and distributed "DORA Quick Facts." She reported on the implementation, impact, and results of the Drug Offender Reform Act. She discussed the program budget and stated that the offenders in the current study sample were convicted after 2007.

Ms. Audrey Hickert, Research Assistant Professor, Utah Criminal Justice Center, reviewed the research performed in compiling the DORA report. One of her recommendations was that additional factors be addressed besides substance abuse, as she believes that including more than one factor would improve program outcomes.

Mr. Pat Fleming, Director, Salt Lake County Behavioral Health Services, explained the model on which DORA was based. He stated that most of the offenders in correctional facilities have substance abuse issues, and at some time they will be released. He said DORA is the best program available to address this issue.

Ms. Hickert addressed the question of whether DORA had any significant impact on recidivism, and explained that the control group, which was not involved in the study, was receiving similar supervision and treatment, so it was difficult to make a comparison.

Mr. Richard Nance, Director, Utah County Department of Drug and Alcohol Treatment, stated that DORA provides a short amount of treatment for a chronic disease. He spoke in favor of Medicaid expansion, which would provide continuing care for these offenders.

#### **11. Adjourn**

**MOTION:** Rep.Oda moved to adjourn the meeting. The motion passed unanimously. Sen. Robles and Rep. Brown were absent for the vote.

Chair Weiler adjourned the meeting at 5:26 p.m.